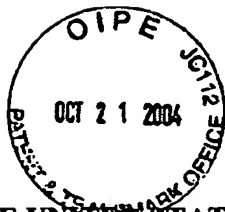


TIZOR - 001



PATENT

DA # JFW

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Pratyush Moghe
Serial No. 10/780,252
Filing Date: February 17, 2004 (pending)
Title: A METHOD AND APPARATUS TO DETECT
UNAUTHORIZED INFORMATION DISCLOSURE
VIA CONTENT ANOMALY DETECTION

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. 1.53(e) TO ACCORD ORIGINAL FILING DATE

This Petition is filed pursuant to 37 C.F.R. §1.53(e) and seeks relief from the initial determination that, because the subject application was filed with embedded drawings, it is not entitled to its actual filing date of February 17, 2004.

A Notice of Incomplete Nonprovisional Application was mailed August 10, 2004. Applicant has filed a full and timely response to that Notice, a copy of which is attached to this Petition.

For the following reasons, the undersigned petitions the Commissioner to accord the application its original filing date of February 17, 2004, and to refund the petition fee of \$130.00 that is being filed with this Petition.

The application was filed initially by the inventor, who is not a patent lawyer or agent. The inventor was unfamiliar with the filing requirements of the Office and, in particular, the

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requirement that drawings cannot be filed as embedded objects in a specification.¹ Nevertheless, drawings were not necessary for the understanding of the subject matter sought to be patented.

In particular, as filed, the original application contained one or more method claims and, therefore, the subject application is an application for which drawings are not necessary under 35 U.S.C. § 113. Claims 1-40 are directed to a method. Pursuant to M.P.E.P. § 601.01(f), it is the practice of the Office to treat all such applications as not requiring a drawing to understand the invention under 35 U.S.C. § 113. The presence of method claims 1-40 alone entitles the application to its original filing date under the accepted practice of the Office, as more particularly described in the above-cited M.P.E.P. section. This is a corollary to the principle that original claims form part of the original disclosure and provide their own written description. See, M.P.E.P. § 601.01(d). Moreover, the application should be fully examined if any claim originally presented does not require a drawing under 35 U.S.C. § 113, which is the case here.

The application also includes a set of "apparatus" claims, numbered 41-48. M.P.E.P. § 601.01(f) recognizes that there are other situations in which drawings are "usually not considered necessary for an understanding of the invention" including claims directed to an apparatus where "the sole distinguishing feature is presence of a particular material." Here, claim 41, in effect, describes such a particular material, namely, a computer program that performs the programmed functions "to capture packets, filter data content, decode packets based on protocol and application, derive content signatures, generate historical trends, detect anomalies, and provide real-time access control." Because claims 41-48 claim an apparatus distinguishable by programmed functions and a method that are fully described, the inclusion of these claims should not foreclose the Applicant from being afforded his original filing date.

In conclusion, the application was filed with claims to a method, as well as a software-enabled apparatus, where the software implements a method that has been fully described. The Office generally recognizes such subject matter as not requiring drawings under 35 U.S.C. § 113. Therefore, the application should be granted its original filing date and all claims of the application should receive full examination.

¹ As noted above, a Substitute Specification has been submitted to remove the embedded drawings.

Alternatively, Applicant will cancel claims 41-48 without prejudice or disclaimer if necessary to obtain grant of this Petition.

In summary, because the application includes at least one method claim and because the claimed method is disclosed in significant detail (without the embedded drawings), the application should be afforded its original filing date. Denial of this Petition will have the effect of penalizing (by the loss of the original filing date) an independent inventor who was not cognizant of the specialized Rules governing patent application filings.

A check in the amount of \$130.00 for payment of the Petition fee is included.

Respectfully submitted,

By: 

David H. Judson, Reg. No. 30,467

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